Supreme Court, U.S.
FILED

021487 APR 3 - 2003

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: DAWN B. MIDDLESTEAD,
PETITIONER, PRO SE.

vs.

HONORABLE JAMES LAWRENCE KING, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, Trial Court Judge; OFFICER RICHARD LINDSEY; OFFICER JANE DOE; LIEUTENANT HOLLIS MEYER, police officers; AARON CAMPBELL, JR., MAJOR, Carol City District Commander, all of the Miami-Dade Police Department, Carol City Station; and CARLOS ALVAREZ, DIRECTOR OF THE MIAMI (METRO) DADE POLICE DEPARTMENT; and MARY GOODMAN, CLAIMS ADJUSTOR, RISK MANAGEMENT DIVISION, MIAMI (METRO) DADE COUNTY, individually and in their official capacities; and MIAMI (METRO) DADE COUNTY, FLORIDA, as employer of the police, director and claims adjustor personnel, which is sued as a person under 42 U.S.C. Section 1983; and LLOYD L. MIDDLESTEAD,
RESPONDENTS.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit, Docket No. 02-15810-I

DAWN B. MIDDLESTEAD
PETITIONER, PRO SE
192 S.W. 52ND TERRACE
PLANTATION, FL. 33317-3623
954) 583-2527

QUESTIONS PRESENTED FOR REVIEW

POINT ONE

WHETHER A PETITION FOR WRIT OF MANDAMUS MUST BE TERMINATED BY A THREE JUDGE PANEL

POINT TWO

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, ERRED IN FAILING TO ISSUE MANDAMUS TO COMPEL JAMES LAWRENCE KING, U.S. DISTRICT JUDGE TO EXERCISE HIS PRESCRIBED JURISDICTION AND AUTHORITY HE WRONGLY DECLINED TO USE, THAT SHOWED "CLEAR ABUSE OF DISCRETION" OR "USURPATION OF HIS JUDICIAL POWER" WHEN THE RIGHT IS "CLEAR AND INDISPUTABLE" AND WHEN THERE IS NO ADEQUATE MEANS TO OBTAIN THE RELIEF SOUGHT

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JURISDICTIONAL STATEMENT
OPINIONS BELOW

The jurisdiction of this court is invoked under 28 U.S.C. Section 1254(1) .

The opinions below in this case are unreported. They are reformatted in the Appendix, infra., to wit: The Order DENYING DAWN'S Petition For Writ of Mandamus, entered on November 20, 2002, by ANDERSON and BLACK, Circuit Judges, under Docket No. 02-15810-I (Appendix A, infra., pages 8-9); The Order DENYING DAWN'S Motion For Reconsideration entered on December 27, 2002, by ANDERSON and BLACK, Circuit Judges (Appendix B, infra., pages 10-11).

STATUTORY, AND RULES PROVISIONS INVOLVED

Rule 27(c), Federal Rules of Appellate Procedure, provides in pertinent part:

> "* * * A circuit judge may act alone on any motion but may not dismiss or otherwise determine an appeal or other proceeding. * * * The court may review the action of a single judge."

Rule 56(c) Summary Judgment, Federal rules of Civil Procedure, provides in pertinent part, as follows:

> "Motion and Proceedings thereon. * * * The judgment sought shall be rendered forthwith if the pleadings, * * * together with the affidavits, * * * show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary

judgment, interlocutory in character may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

Local Rule 7.1(B) Hearings, provides in pertinent part, as follows:

"3. With respect to any motion or any matter which has been pending and fully briefed with no hearing set thereon for a period of 90 days, the Clerk of the Court shall send to the Court and to all parties a "Notification of 90 Expiring and Ripeness for Hearing." * * * When the Court receives such notification , it shall set the matter for hearing within 10 days of receipt of the notification or shall issue an order resolving the motion or other matter during that same 10 day period."

STATEMENT OF THE CASE

On April 12, 2002, DAWN B. MIDDLESTEAD, PETITIONER, PRO SE, Plaintiff, pro se below, filed her Civil Rights Complaint under 42 U.S.C. Sections 1983, 1985(3), 1988 and the 14th Amendment, U.S. Constitution, with jurisdiction under 28 U.S.C. Sections 1434, 1331, seeking $270,000.00 compensatory damages and $500,000.00 punitive damages against the above named Respondents, Defendants, below, for her illegal eviction from her marital residence, on April 19, 1999, which husband abandoned six months prior, by Miami-Dade Police Officers LINDSEY, HOLLIS and DOE, acting under color of law without legal right or authority, in collusion with her husband Lloyd L. Middlestead, Respondent, and the continued fraudulent deceptive plot

and cover-up by the remaining Respondent officials, and the clerk assigned HONORABLE JAMES LAWRENCE KING, U.S.D.J., Respondent, under Case No. 02-21107-CIV-KING.

Respondents GOODMAN, MIAMI-DADE COUNTY, ALVAREZ, represented by the Dade County Attorney, and LLOYD L. MIDDLESTEAD, represented by Gene Reibman, Esq., filed Rule 12(b) Motions To Dismiss. Respondent MEYERS, in default of filing a required Rule 12 response, filed by the Dade County Attorney, her Motion For Summary Judgment and her Affidavit, all going outside the pleading, using as their defense, a "void" use and occupancy order of a County; Court Judge, acting with no due process, in total lack of jurisdiction, that did not bear the official clocked-in time stamp, until after DAWN'S illegal eviction.

On May 15, 2002, DAWN filed her "Plaintiff's Pro se Motion To Strike; And for Default and Summary Judgment And In Opposition To Defendants' Motions To Dismiss And Motion For Summary Judgment" together with her Memorandum of Law In Support Of Plaintiff's Pro Se Motion To Strike; And For Default And Summary Judgment And Reply To Defendants Memorandums Of Law On their Motions To Dismiss And Motion For Summary Judgment with her "Affidavit of Dawn B. Middlestead In Support Of Her Pro Se Motion To Strike; And For Default And Summary Judgment And In Opposition To Affidavit Of Hollis Meyer" with its attached Exhibits A thru N-certified which Affidavit was totally "unopposed," and therewith filed her "Plaintiff's Request For Hearing On Plaintifff's Pro Se Motion To Strike; And For Default and Summary Judgment; And In Opposition To Defendants' Motions To Dismiss And Summary Judgment.

On August 20, 2002, Default was entered by the

Clerk against RESPONDENTS LINDSEY, DOE, CAMPBELL and MIAMI-DADE POLICE DEPARTMENT, CAROL CITY STATION.

On August 28, 2002, "Notification Of 90 Days Expiring And Ripeness For Hearing" on Plaintiff's Motion To Strike, for Default and Summary Judgment and in Opposition to Defendant's Motion to Dismiss and Summary Judgment" was given to RESPONDENT THE HONORABLE JAMES LAWRENCE KING, pursuant to Local Rule 7.1(B)(3), by Catherine Wade, Executive Services Administrator.

On September 17, 2002, the Clerk filed "Plaintiff's Pro Se Request For Order Granting Her Motion For Summary Judgment".

RESPONDENT JAMES LAWRENCE KING, U.S. DISTRICT JUDGE, has, to date, failed, neglected, and refused to perform his ministerial function and duty required by law in this case, pursuant to Rule 56, Fed.R.Civ.P., and Local Rule 7.1(B)(3) to set for hearing DAWN'S pro se Motion To Strike; And For Default and Summary Judgment, filed May 15, 2002, within 10 days of the August 28, 2002, 90 Day Notice, or issues his Order resolving Summary Judgment during the same 10 day period, in DAWN'S favor, when the Pleadings and Affidavits on file show there is no genuine issue as to any material fact and that DAWN is entitled to a judgment as a matter of law.

On October 21, 2002, DAWN, mailed her "Petition For Writ of Mandamus To Honorable James Lawrence King, U.S. District Judge, Southern District of Florida, Miami Division Case No. 02-21107-CIV-KING," on the above grounds and reasons, to the United States Court of Appeals For the Eleventh Circuit which was docketed on under its docket No. 02-15810.

DAWN'S petition was "DENIED" by two single Judges

ANDERSON and BLACK, by their unpublished Orders entered November 20, 2002, (Appendix A, infra., page.8-9) who on December 27, 2002, DENIED DAWN'S pro se Motion for Rehearing To Reconsider and Vacate its Denial (Appendix B, infra., page 10-11) to have three judges consider same, and to vacate the order and the clerk's transmittal letter, that called the November 20, 2002, DENIAL of the Writ of Mandamus, an "Order of Dismissal," and caused it "to issue as the court's mandate, and to set it aside.

Justice Kennedy extended the time to file a petition for a writ of certiorari in this case to and including April 3, 2002, Application No.02A786.

THE REASONS WHY THE WRIT SHOULD ISSUE

ARGUMENT (POINT ONE)
WHETHER A PETITION FOR WRIT OF MANDAMUS MUST BE TERMINATED BY A THREE JUDGE PANEL

The Courts below have so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this court's supervisory power. As appears in the Statement of the Case (page 2-5), an exceptional strong showing was made in the Court of Appeals, that DAWN is entitled to have JUDGE KING lawfully exercise his jurisdiction and authority and rule on her Motion For Summary Judgment, which to date he has declined to do, by complying with the provisions of Rule 56, Federal Rules of Civil Procedure, and Local Rule 7.1(B)(3), on the August 28, 2002, Notification of 90 Days Expiring And Ripeness For Hearing to him on Plaintiff's Motion For Summary Judgment.

This petition follows a "two" Judge Court's denial of DAWN'S Petition For Writ of Mandamus. The November 20, 2002, Order Denying DAWN'S Mandamus Petition (Appendix A, infra., pages 8-9) and the December 27, 2002, Order Denying Rehearing, (Appendix B, infra., pages 10-11) were improperly considered and made without jurisdiction, power, or authority by two single Circuit Judges ANDERSON and BLACK, acting and ruling in this proceeding, and terminating it as they did, in violation of Rule 27(c), Federal R.App.P.,and 11th cir.R.27-1(d). Further, these two judges changed the relief sought and issues raised and relied upon a non-existent "district court's denial of her Motion For Hearing." DAWN is further entitled to a ruling by "The Court" of Appeals, comprised of "Three Judges, as required to consider and rule on her Petition For A Writ of Mandamus as dictated, and that she has no other recourse available, save Mandamus.

ARGUMENT (POINT TWO)

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, ERRED IN FAILING TO ISSUE MANDAMUS TO COMPEL JAMES LAWRENCE KING, U.S. DISTRICT JUDGE TO EXERCISE HIS PRESCRIBED JURISDICTION AND AUTHORITY HE WRONGLY DECLINED TO USE, THAT SHOWED 'CLEAR ABUSE OF DISCRETION' OR USURPATION OF HIS JUDICIAL POWER' WHEN THE RIGHT IS 'CLEAR AND INDISPUTABLE" AND WHEN THERE IS NO ADEQUATE MEANS TO OBTAIN THE RELIEF SOUGHT

DAWN met the standards demanded by this court, entitling her to the issuance of the Writ of Mandamus sought by "the Court" of Appeals, below. DAWN'S pro se

Writ shows that JUDGE KING has wrongly failed, neglected, and refused, to perform his ministerial duty, to "exercise his prescribed jurisdiction and authority," in DAWN'S pro se Civil Rights Case wherein he is the duly assigned District Judge, which demonstrates a "clear abuse of discretion," or conduct amounting to "usurpation of his judicial power" and that the writ sought is "clear and indisputable" with "no other remedy available."

"The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." Roche v. Evaporated Milk Assn, 319 U.S.21,26 (1943). See also Will v Calvert Fire Ins Co., 437 U.S. 655,661 (1978); Kerr v United States District Court of the Northern District of California, 426 U.S. 394,402 (1976); Will v United States, 389 U.S.90,95 (1967).

JUDGE KING below, did not lawfully exercise his jurisdiction to rule in this case mandated under Rule 56, Fed.R.Civ.P. and Local Rule 7.1(B)(3), and the Court of Appeals should therefore order him to exercise his jurisdiction and authority it wrongly declined to use. This Court's requirement is that petitioners demonstrate a "clear abuse of discretion," Bankers Life and Casualty Co. v. Holland, 346 U.S. 379, 383 (1953), or conduct amounting to "usurpation of [the judicial] power." DeBeers Consolidated Mines Ltd v. United States, 325 U.S. 212, 217 (1945) to be entitled to issuance of the writ, and petitioner must "show that they lack adequate means to obtain the relief they seek," e,g, Kerr,supra at 403; Allied Chemical Corp v. Daiflon Inc., 449 U.S. 33, 35 (1980) per curiam), and carry "the burden of showing that (their) right to issuance of the writ is "clear and indisputable," Bankers Life, supra, at 384, quoting United States v. Duell, 172 U.S.

576, 582 (1899).

RESPONDENT JAMES LAWRENCE KING, U.S. DISTRICT JUDGE, is obligated by law under these given circumstances to perform his ministerial act forthwith of making and entering his Order Granting Plaintiff's Pro Se Motion To Strike; And For Default and Summary Judgment in the civil rights action now pending in his court, under Docket No. 02-21107-CIV-JLK, pursuant to Rule 56, Fed.R.Civ.P., and Local Rule 7.1(B)(3). Mandamus is appropriate because there is no other adequate remedy available.

CONCLUSION

Wherefore, DAWN B. MIDDLESTEAD, Petitioner, pro se, humbly prays this honorable court grant her pro se Petition for Writ of Certiorari and issue its writ directing the Circuit Court to forthwith grant her pro se "Petition For Writ of Mandamus To Honorable James Lawrence King, U.S. District Judge, Southern District of Florida, Miami Division, Case No. 02-21107-CIV-KING," and forthwith issue the writ to the District Court.

DATED: RESPECTFULLY SUBMITTED,

APRIL 3, 2003. "S/ DAWN B. MIDDLESTEAD"

DAWN B. MIDDLESTEAD,
PETITIONER, PRO SE
192 S.W. 52ND TERRACE
PLANTATION, FLORIDA 33317-3623

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-15810-I

Dist. Ct. Docket No. 02-21107-CV-JLK

FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT
NOV 20 2002
THOMAS K. KAHN
CLERK

IN RE:

DAWN B. MIDDLESTEAD,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Southern District of Florida

BEFORE: ANDERSON and BLACK, Circuit Judges

BY THE COURT:

Dawn Middlestead, the plaintiff in a civil rights suit under 42 U.S.C. Sec. 1983, files this mandamus petition pro se, requesting that we direct the district court to grant

her request for a hearing and her motion to strike the defendants' motions to dismiss and for default and summary judgment.

Mandamus is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." Jackson v. Motel 6 Multipurpose, Inc., 130 F.3d 999, 1004 (11th Cir. 1997). The petitioner has the burden of showing that she has no other avenue of relief and that her right to relief is clear and indisputable. See Mallard v. United States Dist. Court, 490 U.S. 296, 309, 109 S.Ct.1814, 104 L.Ed.2d 318 (1989).

Middlestead is not entitled to mandamus relief relating to her Motion to Strike or the denial of her Motion for a Hearing, as an adequate alternative remedy exists. As an initial matter, the district court has not yet ruled on the Motion to Strike, meaning that Middlesstead's right to mandamus relief is not clear and indisputable. She has objected to the magistrate's recommendation, and the court will rule on her motion in due course. Once the court has ruled on the Motion to Strike, Middlestead may appeal that decision, if it is adverse to her, after a final judgment has been entered in the case. 28 U.S.C. Sec. 1291. Likewise, Middlestead may challenge the district court's denial of her Motion for Hearing at that time as well. See Kirkland v Nat'l Mortgage Network, Inc., 884 F.2d 1367, 1370 (11th Cir. 1989)(holding that an appeal from a final judgment brings up for review all preceding non-final orders). Accordingly, because an adequate alternative remedy exists, the mandamus petition is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-15810-I

Dist. Ct. Docket No. 02-21107-CV-JLK

FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT
DEC 27 2002
THOMAS K. KAHN
CLERK

IN RE:

DAWN B. MIDDLESTEAD,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Southern District of Florida

BEFORE: ANDERSON and BLACK, Circuit Judges

BY THE COURT:

Dawn B. Middlestead moves this Court for reconsideration of our November 20, 2002 order denying her petition for writ of mandamus, claiming that we

overlooked her argument that the district court unreasonably delayed resolving her motion for summary judgment, in violation of Southern District of Florida Local rule 7.1(B)(3). A party seeking rehearing or reconsideration must specifically allege any point of law or fact that this Court overlooked or misapprehended. See Fed.R.App.P.40. In this case, the magistrate judge addressed Middlestead's motion for summary judgment within four business days of the district court clerk's notification that the motion had been pending for 90 days. To the extent that Middlestead claims that the district court judge committed harmful error by violating the local rule, she may raise that issue on appeal. 28 U.S.C. Section 1291. Accordingly, her motion for reconsideration is DENIED.

APPENDIX B